

**BY-LAWS  
BOARD OF ZONING APPEALS  
FAIRFAX COUNTY, VIRGINIA**

**ARTICLE I. MEMBERSHIP**

The Board of Zoning Appeal ("BZA") shall consist of seven (7) members appointed in accordance with § 15.2-2308 VA Code Ann.

**ARTICLE II. OFFICERS**

1. The BZA shall elect a Chairperson, a Vice-Chairperson, and a Secretary, and appoint a Clerk annually, at its first meeting of each calendar year.
2. In the event any officer's position becomes vacant at any time during the year, an election shall be held at the earliest opportunity to fill the vacancy.
3. The Chairperson shall preside at all meetings and hearings of the BZA. The Chairperson shall decide all points of order and procedure and shall appoint any committees and committee chairpersons that may be found necessary. The Chairperson and the Clerk shall have the authority to administer oaths.
4. The Vice-Chairperson shall assume the duties of the Chairperson in the Chairperson's absence. In the absence of both the Chairperson and Vice-Chairperson, an acting Chairperson shall be selected by the members present to preside over the meeting.
5. The Clerk may be appointed by the BZA from the staff of the Department of Planning and Zoning. A Deputy or substitute Clerk may serve in the absence of the Clerk.

The Clerk or the staff of the Department of Planning and Zoning shall:

- a. prepare official correspondence at the direction of the BZA;
- b. send out notices required by these By-laws, the Fairfax County Zoning Ordinance, and the Code of Virginia;
- c. keep the minutes and records of the BZA's proceedings;
- d. keep a file on each case which comes before the BZA;
- e. send copies of appeals and applications to the Planning Commission as required by the Zoning Ordinance;
- f. maintain other BZA records;
- g. in response to Writs of Certiorari served upon the BZA, prepare and file with the court, in a timely fashion, certified copies of the record of any BZA decision that has been appealed; and

- h. prepare and file the Annual Report of the BZA with the Board of Supervisors.
- 6. The Secretary shall notify the circuit court of any vacancies on the BZA and shall perform duties as assigned by the Board.

### **ARTICLE III. MEETINGS, QUORUM AND VOTING**

- 1. The regular meeting of the BZA shall be held on Wednesdays as needed each month. Each regular meeting shall begin at 9:00 A.M.
- 2. Special meetings may be called by the Chairperson provided at least five (5) days notice of such hearing is given to each member in writing.
- 3. All meetings shall be open to the public unless a closed meeting is held pursuant to the Virginia Freedom of Information Act § 2.2-3700, *et seq.*, VA Code Ann.
- 4. Quorum.
  - a. A quorum shall be necessary to transact any BZA business or for the BZA to hold a meeting.
  - b. A quorum shall consist of four (4) members (i.e., a majority) of the BZA.
- 5. Voting.
  - a. The concurring vote of four (4) members (a simple majority of the membership) shall be required to:
    - (i) grant variances and special permits;
    - (ii) reverse decisions or determinations of the Zoning Administrator;
    - (iii) act contrary to recommendations made by the Planning Commission that an application for a special permit be denied or that specified conditions be prescribed in connection with a particular special permit or variance, pursuant to Section 19-206, Fairfax County Zoning Ordinance ("Zoning Ordinance");
    - (iv) amend district maps;
    - (v) revoke special permits;
    - (vi) grant a rehearing; and
    - (vii) amend these By-laws.
  - b. The concurring vote of a majority of all members present and voting, or such other greater number as may be required by the Code of Virginia or the Zoning Ordinance, shall be required to effect all other actions of the Board.
  - c. Disclosure by a BZA member.

- (1) A member shall make a disclosure of the member's interest in a specific matter before the BZA when required by law.
  - (2) Any disclosure shall be announced and made part of the record of the BZA prior to a case being heard or as soon as a basis for disclosure is discovered.
- d. Disqualification of a BZA member.
  - (1) A member shall be disqualified to act on a specific matter before the BZA when required by law. The reason for disqualification shall be made part of the record of the BZA.
  - (2) A member may be disqualified under any circumstance, which in the opinion of the individual member, would create an appearance of impropriety or unfairness. The decision to be disqualified shall be entered into the record of the BZA, but a member need not state the reasons for disqualification.
  - (3) Any disqualification shall be announced and made part of the record of the BZA prior to a case being heard or as soon as a basis for disqualification is discovered.
6. The order of business at all regular meetings of the BZA shall be as follows:
  - a. Call to order.
  - b. Business of members of the BZA.
  - c. Review of BZA Procedure.
  - d. Public Hearing of scheduled, continued, and deferred for decision items.
  - e. After Agenda items (includes approval of minutes of previous meetings as received).
  - f. Unscheduled items.
  - g. Adjournment.
7. The BZA may adjourn a regular meeting if all applications or other matters scheduled for hearing cannot be disposed of on the day set. Adjournment shall be mandatory six (6) hours after the start of a regular meeting, unless waived by the BZA; and no later than ten (10) hours after the start of the meeting.

#### **ARTICLE IV. DUTIES**

It shall be the duty of the BZA, in accordance with the provisions of § 15.2-2309 VA Code Ann., to hear and decide cases involving the following:

- a. Variances to the strict application of the requirements of the Zoning Ordinance.
- b. Special permits in accordance with provisions of the Zoning Ordinance.
- c. Appeals from a decision of the Zoning Administrator, or other administrative officer, in accordance with the provisions of the Zoning Ordinance.
- d. Applications for the interpretation of the district map where there is any uncertainty as to the location of the district boundary.
- e. Revocations of special permits.

#### **ARTICLE V. APPLICATIONS TO THE BZA**

1. All applications to the BZA for appeals, variances, and special permits shall be made on forms supplied by the Department of Planning and Zoning. All other applications or requests, for which there is no required form, shall be made in writing.
2. All applications shall include all of the information required by the Zoning Ordinance before being scheduled for a public hearing.

#### **ARTICLE VI. PROCESSING OF APPLICATION**

1. All applications shall be filed with the Department of Planning and Zoning Administration. The processing and scheduling of applications shall comply with the requirements of the Fairfax County Zoning Ordinance and the Code of Virginia.
2. The Clerk of the BZA shall notify the applicants in writing of the date, time, and place of the scheduled public hearing.
3. The Clerk shall, in accordance with the Code of Virginia and the Zoning Ordinance, cause to be advertised by publication, in a newspaper of general circulation in the area of the application, the required legal notice of the application.
4. The applicant shall be responsible for fulfilling all applicable notice requirements to abutting and other property owners. This notice shall be by registered or certified mail, with return receipts by the recipient.

5. The staff of the Department of Planning and Zoning shall prepare and distribute a staff report and any pertinent information to the BZA at or before the scheduled public hearing.

## **ARTICLE VII. THE HEARING**

1. Chairperson announces the public hearing and the subject matter.
  - a. If the hearing is for a variance or special permit, the Chairperson shall remind all parties present that the Zoning Ordinance requires a concurring vote of four (4) members of the BZA to approve a variance or special permit or revoke a special permit.
  - b. If the hearing is for an appeal, the Chairperson shall remind all parties present that the Zoning Ordinance requires a concurring vote of four (4) members of the BZA to reverse a determination of the Zoning Administrator or other administrative officer.
  - c. No cross-examination or questions of speakers testifying shall be permitted, except by members of the BZA, without the permission of the Chairperson.
  - d. The Chairperson or the Clerk shall swear in all staff and speakers wishing to testify.
2. Chairperson calls on the staff of the Department of Planning and Zoning to present staff's position and the background of the case. The staff member shall identify the property involved and briefly describe the application.
3. BZA members may pose questions to the staff Member.
4. Chairperson calls on the applicant or appellant and/or their authorized agent or attorney to present the applicant's or appellant's position. This presentation shall be limited to ten (10) minutes.
5. BZA members may pose questions to the applicant or appellant and/or their authorized agent or attorney.
6. Chairperson calls for testimony from any person present, stressing that testimony should be relevant and limited to the precise issue that is the subject of the hearing. This testimony shall be limited to three (3) minutes for individuals and five (5) minutes for group representatives, e.g., civic, condominium, or homeowners associations. Each organization or group shall be limited to one (1) presentation, unless the Chairperson determines otherwise.

7. Chairperson calls on the staff of the Department of Planning and Zoning to offer a rebuttal or additional remarks, if desired.
8. Chairperson calls on applicant or appellant and/or their authorized agent or attorney to rebut or for additional remarks, if desired. This rebuttal period shall be limited to five (5) minutes.
9. BZA members may pose final questions to either the applicant or appellant and/or their authorized agent or attorney or the staff Member.
10. The time periods set forth herein may be modified at the discretion of the BZA. The Chairperson shall enforce the time limitations so that the hearing is held in a fair and orderly manner.
11. Chairperson closes the public hearing.
12. The BZA may discuss the matter and take action. Decisions, action to be taken, and orders of the BZA shall be taken in the form of a motion or resolution. The form and scope of BZA decisions shall be as set forth in § 15.2-2309 VA Code Ann.
13. A decision of the BZA shall be considered a “final decision” for purposes of appeal when the BZA has made a decision that: (1) resolves the merits of the action before the BZA, or (2) effects a dismissal of the case with prejudice. The thirty (30) day appeal period to Circuit Court shall commence upon the final decision of the BZA.  
  
The final decision of the BZA shall be promptly filed with the Clerk and become part of the BZA’s public record. The Clerk shall promptly prepare and provide to the applicant or appellant the BZA’s final decision on the application.
14. All meetings shall be conducted in accordance with these By-laws, the Fairfax County Zoning Ordinance, the Code of Virginia, and the 10<sup>th</sup> edition of *Robert’s Rules of Order* as amended to the extent that *Robert’s* is not inconsistent.

#### **ARTICLE VIII. REQUEST FOR REHEARING AND RECONSIDERATION**

1. A party may request a rehearing by filing said request in writing with the Clerk within seven (7) days of date of the decision sought to be reheard and reconsidered. A decision will not be reheard or reconsidered at the original meeting where it was made.
2. The request must establish one or more of the following:

- a. The BZA overlooked or misunderstood a material fact or legal issue which would change the decision sought to be reheard.
  - b. The existence of new and material evidence, which (i) was not previously available, (ii) could not have been reasonably discovered previously after diligent investigation, and (iii) could change the decision sought to be reheard.
3. A request for rehearing and reconsideration will be considered by the BZA at its next regularly scheduled meeting.
4. A motion to grant a rehearing must be made by at least one (1) member who voted in favor of the decision sought to be reheard.
5. If a decision is made granting a request for rehearing, the BZA will (i) set a date for rehearing, and (ii) notice will be given by the applicants or by the staff of the Department of Planning and Zoning as required by law and these By-laws.
6. A rehearing shall proceed in the same manner as a regular BZA hearing.
7. A request for rehearing and reconsideration alone will not change the deadlines for appeal under the Code of Virginia and Zoning Ordinance.

#### **ARTICLE IX. RECORDS**

1. A file containing all relevant material and decisions, including any final decision, relating to each case shall be kept by the Department of Planning and Zoning staff as part of the records of the BZA.
2. All records of the BZA shall be public records, unless they are exempted from disclosure under the Virginia Freedom of Information Act, § 2.2-3700, et seq., VA Code Ann.

#### **ARTICLE X. SEVERABILITY**

If any word, clause, sentence, article, section, subsection or other part or parts of these By-laws shall be held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining parts of these By-laws, nor shall it affect any application of these By-laws that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of these By-laws are hereby declared to be severable.

**ARTICLE XI. PROCESSING OF APPLICATION**

These By-laws, adopted by the unanimous action of the Board of Zoning Appeals, may be amended by an affirmative vote of not less than four (4) members.



These By-laws have been adopted by the Board of Zoning Appeals, all members thereof present, on this 24<sup>th</sup> day of June, 1969.

Revised: 3-10-70	(Signed) Daniel Smith, Chairperson (Signed) Betty Haines, Clerk
Revised: 8-1-75	(Signed) Daniel Smith, Chairperson (Signed) Jane Kelsey, Clerk
Revised: 9-23-80	(Signed) Daniel Smith, Chairperson (Signed) Sandra L. Hicks, Clerk
Revised: 5-18-82	(Signed) Daniel Smith, Chairperson (Signed) Sandra L. Hicks, Clerk
Revised: 1-25-83	(Signed) Daniel Smith, Chairperson (Signed) Sandra L. Hicks, Clerk
Revised: 11-6-86	(Signed) Daniel Smith, Chairperson (Signed) Betsy S. Hurtt, Clerk
Revised: 1-10-91	(Signed) Daniel Smith, Chairperson (Signed) Betsy S. Hurtt, Clerk
Revised: 1-26-93	(Signed) Daniel Smith, Chairperson (Signed) Betsy S. Hurtt, Clerk
Revised: 6-27-06	(Signed) John DiGiulian, Chairperson (Signed) Kathleen A. Knoth, Clerk
Revised: 5-1-07	(Signed) John Ribble, Chairperson (Signed) Kathleen A. Knoth, Clerk
Revised: 11-17-10	(Signed) John Ribble, Chairperson (Signed) Kathleen A. Knoth, Clerk